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No. 83-14

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983

STATE BOARD OF EQUALIZATION

Petitioner,

v.

TRAILER TRAIN COMPANY, a Corporation, and RAILBOX COMPANY, a Corporation,

Respondents.

PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I

PRELIMINARY STATEMENT

Respondents' opposition brief has done much to confuse what in reality is a relatively straightforward case, from

both a factual and legal point of view. For the convenience of the Court, the factual and legal background of the case will be reviewed here.

The California Private Railroad Car Tax Law ("PRCTL"), Cal. Rev. and Tax Code section 11401 has been in existence since 1943. Prior to the implementation of Proposition 13 (The tax-reducing voter initiative later codified as California Constitution, Article XIII A), the PRCTL has been accepted, without legal challenge, as the method for assessing private railroad cars in California. As pointed out in the Petition,[1/] the PRCTL requires that private railroad cars be assessed at the previous year's average rate of general property taxation. It was only because of the implementation of Proposition 13 resulting in

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1. Petition, p. 6.

an unprecedented reduction in the average rate from 10.68 in the 1977-78 tax year to 4.85 in the 1978-79 tax year, that respondents were motivated to file a lawsuit alleging discrimination under the 4-R Act.[2/] In making these allegations, respondents are essentially seeking to have the tax-reducing provisions of Proposition 13 apply to their railraod cars, even after the California Supreme Court in Board of Supervisors v. Longeran (1980) 27 Cal.3d 855, held that Proposition 13 did not apply to property on the unsecured tax roll, which is generally defined as property, the taxes on which are not secured by a lien on

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2. Section 306, Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11503, et seq.

real property.[3/] The taxes on respondents' railroad cars are not secured by real property, therefore, under this definition, they would be on the unsecured roll.

Petitioner Board did not initially assess respondents' railroad cars in accordance with the requirements of the PRCTL for the 1978-79 tax year because of the provisions of California Constitution, Article XIII, section 2, which provided that personal property shall not be taxed at a rate higher than real property. Some 22 of California's 58 counties, apparently believing that

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3. Cal. Rev. & Tax Code §109 provides in part:

"'Roll' means the entire assessment roll. The secured roll is that part of the roll containing State assessed property and property the taxes on which are a lien on real property sufficient, in the opinion of the assessor, to secure payment of the taxes. The remainder of the roll is the 'unsecured roll'".

the provisions of Proposition 13 only applied to real property, did the opposite and applied the provisions of Proposition 13 to real propery only, not to personal property. As discussed above, the Lonergan case clarified that those 22 counties were correct; therefore under Lonergan petitioner should have assessed respondents' railroad cars in accordance with the requirements of the PRCTL. Following Lonergan, petitioner took corrective action by issuing its additional assessment which is the subject of respondents' underlying complaint.

The essential question in determing whether petitioner has assessed respondents' railroad cars in compliance with the 4-R Act, concerns what is the proper rate for comparison. The District Court used for comparison the same year's average rate of 4.85 and

concluded that the 10.68 rate applied to respondent's railroad cars was discriminatory. On the other hand, the Ninth Circuit found that the District Court's rate for comparison was incorrect and instructed the court to use for comparison the rate applicable to the tax roll, secured or unsecured, containing the majority of commerical and industrial property in the State.

Petitioner Board contends that its assessment of respondents' railroad cars under the PRCTL was proper and fully in accordance with the Fourth Circuit's Opinion in Clinchfield Railroad Company v. Lynch 700 F.2d 126 (4th Cir. 1983) in that the proper rate for comparison would be 10.63, which represents the average rate applied to property on the unsecured roll.[4/]

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4. Petition, App. I, p. 3.

ARGUMENT

I

THE NINTH CIRCUIT OPINION DIRECTLY CONFLICTS WITH THE FOURTH CIRCUIT OPINION IN CLINCHFIELD RAILROAD COMPANY v. LYNCH

As discussed above, the Ninth Circuit instructed the District Court to compare the tax rate applied to respondents' railroad cars with the rate applied to the tax roll, secured or unsecured, containing the majority of the commercial and industrial property in the state. By completely ignoring the basic distinction between personal and real property intended in the enactment of the 4-R Act, the Ninth Circuit's opinion directly conflicts with the Fourth Circuit's opinion in Clinchfield Railroad Company v. Lynch, supra.

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A. There is no Distinction of any Significance Between this Case and Clinchfield

Respondents' opposition brief is devoted primarily to their futile attempts at making distinctions between this case and Clinchfield. In fact, there are none of any consequence.

Initially, respondents argue that there is a distinction between the issues of alleged tax rate discrimination in this case and alleged assessment ratio discrimination in Clinchfield. This is a distinction purely of form, without any substance. Tax rate discrimination would be the application of a higher percentage rate to the assessed value, resulting in a higher tax. Assessment ratio discrimination would be the application of a higher ratio of assessed value to true market value, resulting in a higher tax. In either instance, there would be a discrepancy between the amount of tax

assessed upon properties of equal true market value, which is the evil sought to be corrected by the 4-R Act. A brief examination of the applicable provisions of the 4-R Act readily reveals that the provisions of section 306(1)(a) and 306(1)(c) only represent descriptions of the ways in which the prohibited discrimination can take place. All of the operative provisions of section 306 apply equally to subdivisions (1)(a) and (1)(c). It is apparent that there would be no basis for distinguishing the two cases based on the difference in the manner in which the alleged discrimination supposedly took place. As pointed out in the Petition, neither form of discrimination took place in this case.

Second, respondents argue that a distinction lies in the difference in the classification of property in California versus North Carolina, the

taxing authority in Clinchfield. In North Carolina, a distinction is made in the classification and frequency of assessments of property depending on whether it is personal or real.

In California, there is a vast distinction for rate purposes, between real and personal property. The distinction is underscored in the very definition of the secured and unsecured rolls. As discussed above, the essential difference between the two rolls lies in whether the taxes are sufficiently secured by a lien on real property. Under this definition, since respondents' railroad cars, like most personal property, are not secured by a lien on real propety, they would appropriately be on the unsecured roll.

Obviously, in classifying property onto the secured and unsecured rolls, California recognizes the distinction

between real and personal property. However, in making rate comparisons under the 4-R Act, classification of property for rate purposes into personal and real is not a prerequisite for the basic distinction between the two types of property to be recognized. As amply set forth in the petition,[5/] the legislative history of the 4-R Act reflects a clear intent to recognize a distinction between personal and real property in making comparisons under the 4-R Act. If this distinction were made in this case, the rate of 10.68 applied to respondents' railroad cars would have been compared with the rate of 10.63, which is the average rate applied to property on the unsecured roll, rather than the average rate general property taxations of 4.85.

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5. Petition, p. 12-14.

This would result in drastic reduction in any recovery by respondents in this case.

Third, respondents argue that Clinchfield may be distinguished on grounds that it involved burden of proof issues not present in the instant case. However, that burden of proof issue was clearly a peripheral one. The crux of the opinion was the court's recognition of the difference between personal and real property, and its resolve to make the rate comparisons on that basis.

B. The Case of Atchison, Topeka, and Santa Fe Railway Co. v. Lennen Is not Applicable

Respondents cite Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 531 F.Supp. 220, 232 (D. Kan. 1981) in arguing that distinctions between states in their respective laws and assessment practices require that the courts be given "flexibility" in their application of the 4-R Act. Respondents point out

that in that case, Kansas classified nearly all railroad property, including railroad real estate, as personal property. That case is not at all applicable here, however, where petitioner Board of Equalization seeks to compare the rate applied to respondents' railroad cars, which are clearly personal property, to the rate applied to the unsecured roll, which likewise consists primarily of personal property.

C. The Ninth Circuit Should have Adopted the Fourth Circuit's Approach in Clinchfield

The legislative history behind the 4-R Act clearly reflects the intent that like property be compared in making rate comparisons under the 4-R Act.[6/] This intent is properly carried out with the Fourth Circuit's attempt in Clinchfield to distinguish between personal and real

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6. Petition, p. 12-14.

property. It is also inherently unfair for comparisons to be made between unlike types of property. In comparing the tax rates applied to respondents' railroad cars to the roll containing the majority of the commercial and industrial property in the state, when the secured roll contains almost all of the property in the state,[7/] the Ninth Circuit contravened the Congressional intent behind the 4-R Act. Moreover, it acted contrary to the Fourth Circuit's decision in Clinchfield.

II

THE NINTH CIRCUIT DECISION IS IN CONFLICT WITH WEINBERGER v. ROMERO-BARCELO

The case of Weinberger v. Romero-Barcelo (April 22, 1983 ___ U.S. ___, 72 L.Ed.2d 91, together with the

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7. Opposition Brief, App. B, pp.3.

legislative history of the 4-R Act, (See Petition, p. 22-23) clearly reflect that equitable considerations are to be made by the court prior to issuing injunctive relief. In the present case the Ninth Circuit held that the standard requirements for equitable relief need not be satisfied. Regardless of the District Court's findings in this case, the Ninth Circuit's erroneous holding on this point should be corrected in order to avoid further erroneous applications in reliance on its opinion.

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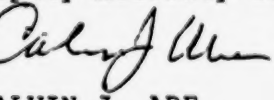
CONCLUSION

For all of the foregoing reasons, petitioner State Board of Equalization urges the Court to grant the writ of certiorari.

DATED: SEPTEMBER 23, 1983

Respectfully submitted,

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